

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: W.R. GRACE & CO., <i>et al.</i>, Debtors.	§ § § § § §	Chapter 11 Jointly Administered Case No. 01-01139 (KJC)
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**FEE AUDITOR'S FINAL REPORT REGARDING THE MONTHLY
APPLICATION OF FRAGOMEN, DEL REY, BERNSEN & LOEWY, LLP,
FOR THE PERIOD OF JANUARY 1, 2014 THROUGH JANUARY 31, 2014
AND THE FINAL APPLICATION OF FRAGOMEN, DEL RAY, BERNSEN
& LOEWY, LLP, FOR COMPENSATION FOR SERVICES RENDERED AND
REIMBURSEMENT OF EXPENSES AS IMMIGRATION COUNSEL TO THE
DEBTORS FOR THE PERIOD OF APRIL 2, 2007 THROUGH FEBRUARY 3, 2014**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Monthly Application of Fragomen, Del Rey, Bernsen & Loewy, LLP, for the Period of January 1, 2014 through January 31, 2014 and the Final Application of Fragomen, Del Rey, Bernsen & Loewy, LLP, for Compensation for Services Rendered and Reimbursement of Expenses as Immigration Counsel to the Debtors for the Period of April 2, 2007 through February 3, 2014 (the "Applications").

BACKGROUND

1. Fragomen, Del Rey, Bernsen & Loewy LLP ("Fragomen") was retained as immigration counsel to the Debtors. In the Applications, Fragomen seeks approval of fees and expenses as follows: fees totaling \$5,050.00 and expenses totaling \$1,563.00 for its services from January 1, 2014 through January 31, 2014 (the "January 2014 Monthly Application"), and final

approval of fees totaling \$570,053.11¹ and expenses totaling \$222,058.95² for its services from April 2, 2007 through February 3, 2014 (the “Final Application Period”).

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2014, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the “U.S. Trustee Guidelines”), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. We emailed an inquiry to Fragomen based upon our review, and we received a response from Fragomen, portions of which response are reflected herein.

¹We note that the total of the fees requested in Fragomen’s 26 prior fee applications, plus the compensation sought in the January 2014 Monthly Application, is \$489,313.11. The Court ordered no reductions for the prior interim periods, which periods are discussed in more detail in paragraph 7. However, a portion of Fragomen’s fees were excluded from our review because they were billed by Fragomen prior to entry of its retention order, and during a period in which it was an Ordinary Course Professional (*see* paragraph 7 and n. 5). Fragomen has deducted no sums from its requested fees to arrive at the figure it seeks of \$570,053.11. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

²We note that the total of the expenses requested in Fragomen’s 26 prior fee applications, plus the expenses sought in the January 2014 Monthly Application, is \$223,621.96. The Court ordered no reductions for the prior interim periods, which periods are discussed in more detail in paragraph 7. However, a portion of Fragomen’s expenses were excluded from our review because they were billed by Fragomen prior to entry of its retention order, and during a period in which it was an Ordinary Course Professional (*see* paragraph 7 and n.5). Fragomen has deducted no sums from its requested expenses to arrive at the figure it seeks of \$222,058.95. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

DISCUSSION

January 2014 Monthly Application

3. We have no issues with, or objections to, Fragomen's fees and expenses for January 2014.

4. Thus, we recommend approval of \$5,050.00 in fees and \$1,563.00 in expenses for Fragomen's January 2014 Monthly Application.

Final Application Period

5. We noted that Fragomen had requested final approval of fees totaling \$570,053.11, however, we calculated Fragomen's total requested fees over the course of the case at \$489,313.11, for a difference of \$80,740.00. There were two reasons for this discrepancy. First, in its Final Application, Fragomen listed its fees for October 2007 as \$95,321.25 when they were actually \$9,531.25, thereby inadvertently overstating its fees by \$85,790.00. Second, Fragomen's final fee request did not include its January 2014 fees of \$5,050.00. After adding the January 2014 fees of \$5,050.00 and subtracting the overage for October 2007 of \$85,790.00, the net result is \$80,740.00. We brought these errors to Fragomen's attention, and Fragomen agreed to the adjustments. Thus, we recommend that Fragomen's final fee request be reduced by \$80,740.00.

6. We noted that Fragomen had requested final approval of expenses totaling \$222,058.95, however, we calculated Fragomen's total requested expenses over the course of the case at \$223,621.96, for a difference of \$1,563.01. The primary reason for this discrepancy is that Fragomen's final expense request did not include its January 2014 expenses of \$1,563.00. We brought this to Fragomen's attention, and Fragomen confirmed that the amount should have been included in its final expense request. Thus, we recommend that Fragomen's final expense request

be increased by \$1,563.00.^{3, 4}

Prior Interim Applications

7. We note that we previously filed the following final reports for Fragomen's prior interim applications, which final reports we incorporate by reference herein, and we also note the following orders that ruled on Fragomen's prior interim fee applications:

25th - 26th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Seventh Interim Period (Docket #18887), filed on or about June 9, 2008, in which we recommended approval of fees totaling \$85,029.33 and expenses totaling \$23,926.96. We recommended no fee or expense reductions, but we excluded from our review \$44,251.43 in fees and \$10,456.64 in expenses because they were billed by Fragomen prior to its retention date of April 2, 2007, when it was still performing work for the Debtors as an Ordinary Course Professional ("OCP").⁵ These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Seventh Period, dated June 23, 2008 (Docket #18989).

27th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications

³This \$1,563.00 increase is offset by reductions recommended elsewhere in this report.

⁴This accounts for all but \$0.01 of the \$1,563.01 discrepancy which we noted. However, as the remaining \$0.01 discrepancy is *de minimis* and in the estate's favor, we did not inquire about this issue.

⁵Such OCP fees and expenses are excluded from the scope of our review by paragraph 3 of the Order Appointing Fee Auditor in Accordance with the Court's Direction, dated March 18, 2002, and thus we made no recommendations concerning these fees and expenses in our final report for that period.

with No Fee or Expense Issues for the Twenty-Seventh Interim Period (Docket #18887), filed on or about June 9, 2008, in which we recommended approval of fees totaling \$18,681.25 and expenses totaling \$1,959.00. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Seventh Period, dated June 23, 2008 (Docket #18989).

28th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Eighth Interim Period (Docket #19535), filed on or about September 15, 2008, in which we recommended approval of fees totaling \$28,300.00 and expenses totaling \$2,578.00. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Eighth Period, dated October 1, 2008 (Docket #19663).

29th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Twenty-Ninth Interim Period (Docket #20150), filed on or about November 26, 2008, in which we recommended approval of fees totaling \$11,850.00 and expenses totaling \$8,743.31. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Twenty-Ninth Period, dated December 17, 2008 (Docket #20283).

30th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirtieth Interim Period (Docket

#21063), filed on or about March 21, 2009, in which we recommended approval of fees totaling \$20,500.00 and expenses totaling \$8,232.24. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirtieth Period, dated April 2, 2009 (Docket #21173).

31st Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Seventh Interim Period (Docket #25850), filed on or about December 2, 2010, in which we recommended approval of fees totaling \$14,894.85 and expenses totaling \$25,032.17. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Seventh Period, dated December 10, 2010 (Docket #25905).

32nd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Seventh Interim Period (Docket #25850), filed on or about December 2, 2010, in which we recommended approval of fees totaling \$39,575.00 and expenses totaling \$4,551.04. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Seventh Period, dated December 10, 2010 (Docket #25905).

33rd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Seventh Interim Period (Docket #25850), filed on or about December 2, 2010, in which we recommended approval of fees totaling \$22,675.00 and expenses totaling \$1,239.00. The

Court approved \$44,896.00 in fees and \$88.45 in expenses in the Order Approving Quarterly Fee Applications for the Thirty-Seventh Period, dated December 10, 2010 (Docket #25905).

34th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Seventh Interim Period (Docket #25850), filed on or about December 2, 2010, in which we recommended approval of fees totaling \$11,550.00 and expenses totaling \$4,119.18. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Seventh Period, dated December 10, 2010 (Docket #25905).

35th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Seventh Interim Period (Docket #25850), filed on or about December 2, 2010, in which we recommended approval of fees totaling \$5,275.00 and expenses totaling \$5,818.25. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Seventh Period, dated December 10, 2010 (Docket #25905).

36th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Seventh Interim Period (Docket #25850), filed on or about December 2, 2010, in which we recommended approval of fees totaling \$20,825.00 and expenses totaling \$13,280.07.

These recommendations were adopted in the Order Approving Quarterly Fee

Applications for the Thirty-Seventh Period, dated December 10, 2010 (Docket #25905).

37th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Seventh Interim Period (Docket #25850), filed on or about December 2, 2010, in which we recommended approval of fees totaling \$14,875.00 and expenses totaling \$10,445.04. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Seventh Period, dated December 10, 2010 (Docket #25905).

38th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Eighth Interim Period (Docket #26519), filed on or about March 9, 2011, in which we recommended approval of fees totaling \$4,850.00 and expenses totaling \$1,695.60. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Eighth Period, dated March 25, 2011 (Docket #26627).

39th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with No Fee or Expense Issues for the Thirty-Ninth Interim Period (Docket #27116), filed on or about June 21, 2011, in which we recommended approval of fees totaling \$5,650.00 and expenses totaling \$14,183.17. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Thirty-Ninth Period, dated June 30, 2011

(Docket #27188).

40th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-First Interim Period (Docket #28070), filed on or about December 2, 2011, in which we recommended approval of fees totaling \$1,500.00 and expenses totaling \$355.88. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-First Period, dated December 14, 2011 (Docket #28150).

41st Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-First Interim Period (Docket #28070), filed on or about December 2, 2011, in which we recommended approval of fees totaling \$12,643.75 and expenses totaling \$15,338.92. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-First Period, dated December 14, 2011 (Docket #28150).

42nd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Second Interim Period (Docket #28548), filed on or about February 20, 2012, in which we recommended approval of fees totaling \$7,075.00 and expenses totaling \$5,642.58. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Second Period, dated March 23, 2012 (Docket #28705).

- 43rd Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Third Interim Period (Docket #28900), filed on or about May 9, 2012, in which we recommended approval of fees totaling \$18,750.00 and expenses totaling \$11,619.95. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Third Period, dated June 14, 2012 (Docket #29054).
- 44th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Fourth Interim Period (Docket #29449), filed on or about August 13, 2012, in which we recommended approval of fees totaling \$8,850.00 and expenses totaling \$6,270.38. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Fourth Period, dated October 19, 2012 (Docket #29746).
- 45th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Fifth Interim Period (Docket #29988), filed on or about December 4, 2012, in which we recommended approval of fees totaling \$32,725.00 and expenses totaling \$6,742.25. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Fifth Period, dated December 11, 2012 (Docket #30036).
- 46th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications

with *De Minimis* or No Fee or Expense Issues for the Forty-Sixth Interim Period (Docket #30382), filed on or about March 7, 2013, in which we recommended approval of fees totaling \$6,875.00 and expenses totaling \$5,575.08. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Sixth Period, dated March 27, 2013 (Docket #30440).

47th Period: Fee Auditor's Amended Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Seventh Interim Period (Docket #30840), filed on or about July 17, 2013, in which we recommended approval of fees totaling \$10,550.00 and expenses totaling \$5,289.78. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Seventh Period, dated July 31, 2013 (Docket #30907).

48th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Eighth Interim Period (Docket #31080), filed on or about September 6, 2013, in which we recommended approval of fees totaling \$10,950.00 and expenses totaling \$8,674.52. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Eighth Period, dated September 24, 2013 (Docket #31158).

49th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Forty-Ninth Interim

Period (Docket #31404), filed on or about November 26, 2013, in which we recommended approval of fees totaling \$12,837.50 and expenses totaling \$12,758.15. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Forty-Ninth Period, dated December 17, 2013 (Docket #31482).

50th Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Fiftieth Interim Period (Docket #31838), filed on or about March 11, 2014, in which we recommended approval of fees totaling \$5,075.00 and expenses totaling \$6,996.45. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fiftieth Period, dated March 11, 2014 (Docket #31963).

51st Period: Fee Auditor's Combined Final Report Regarding Those Fee Applications with *De Minimis* or No Fee or Expense Issues for the Fifty-First Interim Application Period (Docket #32197), filed on or about May 13, 2014, in which we recommended approval of fees totaling \$7,650.00 and expenses totaling \$535.35. These recommendations were adopted in the Order Approving Quarterly Fee Applications for the Fifty-First Period, dated May 23, 2014 (Docket #32216).

8. We have reviewed the final reports and orders allowing fees and expenses for the prior interim periods, and we do not believe there is any reason to change any of the amounts awarded for the prior interim periods, except for the Thirty-Third Interim Period. In the order

submitted to the Court for that period, Fragomen's fees were listed as \$44,896.00, but the correct amount was \$22,675.00, with the difference being \$22,221.00. Also in that order, Fragomen's expenses were listed as \$88.45, but the correct amount was \$1,239.00, with the difference being \$1,150.55. However, because Fragomen's final fee and expense request is based on the correct amounts of \$22,675.00 in fees and \$1,239.00 in expenses, no further adjustment to Fragomen's final fee and expense request is necessary to correct this error.

CONCLUSION

9. Thus, we recommend final approval of \$445,061.68 in fees (\$570,053.11⁶ minus \$80,740.00⁷ and excluding \$44,251.43 in OCP fees)⁸ and \$213,165.31 in expenses (\$222,058.95⁹

⁶We note that the total of the fees requested in Fragomen's 26 prior fee applications, plus the compensation sought in the January 2014 Monthly Application, is \$489,313.11. The Court ordered no reductions for the prior interim periods, which periods are discussed in more detail in paragraph 7. However, a portion of Fragomen's fees were excluded from our review because they were billed by Fragomen prior to entry of its retention order, and during a period in which it was an OCP (*see* paragraph 7 and n.5). Fragomen has deducted no sums from its requested fees to arrive at the figure it seeks of \$570,053.11. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

⁷This is the sum of the adjustments we recommended to correct Fragomen's final fee request. *See* paragraph 5.

⁸*See* paragraph 7 and n. 5.

⁹We note that the total of the expenses requested in Fragomen's 26 prior fee applications, plus the expenses sought in the January 2014 Monthly Application, is \$223,621.96. The Court ordered no reductions for the prior interim periods, which periods are discussed in more detail in paragraph 7. However, a portion of Fragomen's expenses were excluded from our review because they were billed by Fragomen prior to entry of its retention order, and during a period in which it was an OCP (*see* paragraph 7 and n. 5). Fragomen has deducted no sums from its requested expenses to arrive at the figure it seeks of \$222,058.95. We note that the Court has ruled on the First through Fifty-First Interim Periods, but no ruling has been made on the Fifty-Second Interim Period.

plus \$1,563.00¹⁰ and excluding \$10,456.64 in OCP expenses)¹¹ for Fragomen's services for the Final Application Period.

Respectfully submitted,

WARREN H. SMITH & ASSOCIATES, P.C.



By: _____

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FEE AUDITOR

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 2nd day of August, 2014.



Warren H. Smith

¹⁰This is the amount of the increase we recommended to correct Fragomen's final expense request. *See* paragraph 6.

¹¹*See* paragraph 7 and n. 5.

SERVICE LIST

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